



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 6018 OF 2023

(Yeshwant Wasudeo Motghare Vs. The Additional Commissioner, Nagpur Division & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri S.D. Chande, Counsel for the petitioner.
Shri H.D. Dubey, A.G.P. for respondent nos. 1 to 3.
Shri Ram Karode, Counsel for respondent no.5.

.....

CORAM : ANIL L. PANSARE, J.
AUGUST 12, 2024

The challenge is to order dated 26/6/2023 passed by respondent no.1 – Additional Commissioner in appeal filed by respondent no.5 under Section 16(2) of the Maharashtra Village Panchayats Act, 1958 (for short “Act of 1958”). The Additional Commissioner has set aside order dated 28/2/2023 passed by the Collector, Bhandara, by which, respondent no.5 was disqualified as Member of Gram Panchayat – Ukara, Taluka – Sakoli, District – Bhandara under Section 14(1)(j-3) of the Act of 1958.

2] The petitioner made complaint to the Collector stating therein that the respondent no.5 has made encroachment and accordingly the Collector, after having conducted enquiry, found substance in the complaint so made by the petitioner and, thus, disqualified respondent no.5. The Collector, while disqualifying respondent no.5, after taking stock of various reports, held that respondent no.5's father has encroached upon Government land.

3] This order was challenged by respondent no.5 before the Additional Commissioner, who held that encroachment has been made by respondent no.5's father, but respondent no.5 was not residing with his father, rather he is residing separately. Accordingly, the order of the Collector was set aside.

4] The learned Counsel for the petitioner could not point out to me any document indicating that respondent no.5 is/was residing with his father. As such, the petitioner has relied upon report dated 14/10/2022 submitted by the Secretary, Gram Panchayat to the Additional Collector, Bhandara. The report indicates that respondent no.5 has made certain construction. However, in the relevant abstract, the remark of encroachment was not taken. The report then mentions that the Talathi has furnished certain documents and that there is encroachment. The report further indicates that no action was taken against such encroachment in terms of Government Resolution dated 10/10/2013. The report concludes with the statement that note of encroachment has been taken in Abstract – 8.

5] This document, to my mind, cannot be said to be an evidence of respondent no.5 residing with his father. The report is self-contradictory and does not carry any meaning. At one point, the Secretary has stated that there is no note of encroachment in Abstract – 8 and in concluding paragraph, he states that there is note of encroachment in the said abstract. The learned Commissioner has, therefore, rightly ignored this report.

In other words, there is no evidence of respondent no.5 making any encroachment.

6] The Writ Petition is accordingly dismissed.

(ANIL L. PANSARE, J.)

Sumit